

MINUTES

BOARD OF ADJUSTMENT

TOWNSHIP OF BERKELEY HEIGHTS, NEW JERSEY

Conference & Regular Meeting

October 9, 2014

The Conference and Regular Meeting of the Board of Adjustment was called to order at 7:30 PM in the Public Meeting Room.

It was confirmed that the meeting was being held in conformance with all regulations of the SUNSHINE LAW and proper notice had been given to the Courier News; also, the Agenda had been posted in Town Hall, Board Office, and supplied to the Township Clerk at least forty-eight hours prior to the meeting. The Agenda items will not necessarily be heard in the order listed and the meeting will not continue significantly past 10:30 PM.

Roll Call:

Members present were Mr. Bussiculo, Mr. Boyer, Mr. Smith, Mr. Siburn, Mr. Sullivan, Mr. Henry and Mr. Delia. Mr. Miller was absent. Mr. Daniel Bernstein, Board Attorney, was also present.

Application for Review:

--CARRIED FROM SEPTEMBER 11, 2014, WITHOUT FURTHER NOTICE:

App.#24-14: Berkeley Square, L.L.C., 240-264 Springfield Ave., Bl. 801, Lots 23 & 24

Proposed amendment of the previous site plan and land use approval to include 2 reserved off-street parking spaces and request an off-street parking variance for 1 space. Applicant requests approval of the amendment to the site plan, variance relief from the standards regulating: 1) maximum other coverage; 2) the number, location, size and design of off-street parking spaces where 1 additional space is needed and where 2 reserved spaces are proposed near Springfield Avenue in the front of the building; and 3) the permitted uses in the R-15 zone where residential uses are permitted and the pre-school, its access, off-street parking and other uses accessory to the non-permitted or conditionally permitted pre-school and retail stores are proposed; together with all other relief in the form of variances, interpretations, appeals, waivers or exceptions in the strict application of the provisions of the Land Use Procedures Ordinance, and other relief, which may arise during the course of the hearings in this application, necessary to realize the development as set forth more specifically in the application for development on file, as may be amended,

including during the application, and available for inspection in connection herewith.

James Webber, attorney for the applicant, was present.

Jeffrey Pocaro, attorney representing Marcello Cavallero, owner of the adjacent property, Marcello's restaurant, stated that there are tire marks at the entrance to the property from some near missed accidents that have occurred due to the fact that the first driveway of the new property is only a short distance away from the entrance and exit for his client's restaurant. His client believes the proximity of the two parking lots was not properly addressed by the traffic experts and he would suggest that the first driveway for the new property be required to be an entrance only driveway.

Mr. Bernstein stated that this is a private matter. The matter before the Board relates to the question of whether or not the third unit can be used with two banked parking spaces. The site plan was reviewed by the Board's planner and engineer and the applicant has the right to use the approved configuration as they see fit. Mr. Bernstein urged Mr. Cavallero to speak with the applicant's professionals to see if this can be resolved and he urged Mr. Webber to tell his client that the restaurant owner has concerns.

Mr. Bernstein advised that Messrs. Boyer, Smith, Henry and Delia have read the transcript of the previous hearing and are eligible to vote on this application.

A motion was made by Mr. Delia, seconded by Mr. Smith, to approve Application # 24-14: Berkeley Square, L.L.C., 240-264 Springfield Ave., Bl. 801, Lots 23 & 24 for amendment of the previous site plan to include 2 reserved off-street parking spaces and an off-street parking variance for 1 space subject to the conditions that shall be set forth in a Resolution of Memorialization to be adopted by the Board. The voice vote was unanimous with Mr. Bussiculo, Mr. Boyer, Mr. Smith, Mr. Siburn, Mr. Sullivan, Mr. Henry, and Mr. Delia voting in favor.

Adoption of Resolutions:

App.#24-14: Berkeley Square, L.L.C., 240-264 Springfield Ave., Bl. 801, Lots 23 & 24

Proposed amendment of the previous site plan and land use approval to include 2 reserved off-street parking spaces and request an off-street parking variance for 1 space. Applicant requests approval of the amendment to the site plan, variance relief from the standards regulating: 1) maximum other coverage; 2) the number, location, size and design of off-street parking spaces where 1 additional

space is needed and where 2 reserved spaces are proposed near Springfield Avenue in the front of the building; and 3) the permitted uses in the R-15 zone where residential uses are permitted and the pre-school, its access, off-street parking and other uses accessory to the non-permitted or conditionally permitted pre-school and retail stores are proposed; together with all other relief in the form of variances, interpretations, appeals, waivers or exceptions in the strict application of the provisions of the Land Use Procedures Ordinance, and other relief, which may arise during the course of the hearings in this application, necessary to realize the development as set forth more specifically in the application for development on file, as may be amended, including during the application, and available for inspection in connection herewith.

A motion was made by Mr. Siburn, seconded by Mr. Delia, to adopt the above Resolution. The voice vote was unanimous with Mr. Bussiculo, Mr. Boyer, Mr. Smith, Mr. Siburn, Mr. Sullivan, Mr. Henry, and Mr. Delia voting in favor.

App.#25-14: 369 Springfield Avenue Associates, LLC, 369 Springfield Ave., Bl.208, L.21

Resolution deeming the application of 369 Springfield Avenue Associates, LLC incomplete

A motion was made by Mr. Sullivan, seconded by Mr. Smith, to adopt the above Resolution. The voice vote was unanimous with Mr. Bussiculo, Mr. Smith and Mr. Sullivan voting in favor.

New Applications for Informal Review:

App.#26-14: Ramesh & Sheela Raman, Kuntz Avenue, Block 301, Lot 18 (R-15 Zone)

Proposed construction of a single-family dwelling located on a vacant corner lot fronting Kuntz Avenue and Camptown Drive. Relief is needed from Section 6.1.1B "Schedule of General Regulations" due to an insufficient rear yard setback and "other" coverage which exceeds the maximum allowed. Variances are also needed for a) the proposed driveway which would be 3.5 ft. off of the side property line (required: 5 ft. according to Section 11.1.7A); b) a proposed boardwalk along the driveway, which would be an accessory structure that is prohibited in the front yard by Section 3.1.1B.4. The plan indicates that the boardwalk would be constructed immediately adjacent to or on the shared side property line with Bl. 301, L. 19; c) the "Building Overhang" depicted on the plans as a carport which is a prohibited use as per Section 6.3.1E.1; d) not adhering to Section 6.3.10A. Residential Garage Construction because an enclosed garage

is not proposed; e) constructing the driveway with stone material while a paved driveway is required by ordinance; f) non-conforming lot width.

Mr. Raman stated that he intends to build a single family house with a driveway on the property. The property is located in the flood fringe and has wetlands that are regulated by the State. Mr. Raman discussed the process by which they obtained DEP permits. He further stated that they are unable to meet the 40' setback. The proposed house would be 1,550 square feet and will be constructed on pilings. The proposed boardwalk would also be on pilings. The property is very wooded so the pilings will not be visible.

Discussion took place and it was suggested that the Board members visit the property. It was noted that the proposed house will be behind another house.

The application was deemed complete and scheduled for hearing on October 23, 2014, with notices to be sent out. The applicant was advised to bring architectural drawings, conceptual plans for the proposed house, photographs of the neighborhood showing what the neighbors will see, and information regarding the materials to be used for the boardwalk.

App.#28-14: Edward Koch, 170 Killarney Drive, Block 3505, Lot 35 (R-20 Zone)

Proposed in-ground pool with an at grade surrounding paver patio, waterfall feature and a raised patio (15' x 15' x 4' high) at the exit slider doors from the rear of the house. Relief is needed from Section 6.1.1B "Schedule of General Regulations" because 1) the accessory rear yard setback is proposed to be less than the required 15' and 2) the proposed side yard setback is less than the required 12'. Also, the proposed "other" and "total" lot coverages will exceed the maximum permitted coverages of 10% and 25%, respectively. The at grade pool surround will be constructed with a permeable paver system and was therefore not counted in the calculation of "other" coverage. Nonconforming issues are lot depth, lot area, principal front yard setback and existing building coverage.

Edward Koch stated that variances for total coverage and setback are required for the proposed 650 square foot pool.

In response to questions from the Board, Mr. Koch stated that the property is flat, the pool equipment will be stored on the side of the house and there will be shrubs planted around the property to make it private.

The application was deemed complete and scheduled for hearing on October 23, 2014, with notices to be sent out. The applicant was asked to correct the numbers on the application to match the plan, to bring photographs of what the neighbors will see, to provide the dimensions of the proposed pool and to try to bring the coverage down to less than 30%.

Applications for Review:

**--CARRIED FROM SEPTEMBER 11, 2014, WITHOUT FURTHER NOTICE:
App.#25-14: 369 Springfield Avenue Associates, LLC, 369 Springfield Ave.,
Bl.208, L.21**

Applicant is requesting approval of proposed changes to the exterior elevation of an existing one-story commercial building by adding a "mansard seam roof section" (approx.. 200' long x 14' high) with new lit signage. Relief is needed from Section 10.1.2A which requires Board approval of site plan; Section 5.9.6 which prohibits signs placed on the second or higher story, Article 5.11 which prohibits roof signs, Section 5.4.2DD3 because the proposed area of the signs exceeds the allowed 10% of the first-story wall surface. (DD-Zone)

A motion was made by Mr. Henry, seconded by Mr. Smith, to deem the Application complete. The voice vote was unanimous with Mr. Bussiculo, Mr. Boyer, Mr. Smith, Mr. Siburn, Mr. Sullivan, Mr. Henry, and Mr. Delia voting in favor.

David Hofmann, architect, was sworn, gave his professional and educational background and was accepted as an expert witness.

David Bendush, attorney representing the owner of the property was present.

Michael Mistretta, Township Planner, was sworn and accepted as an expert witness.

Mr. Hofmann presented Exhibit A-1 – photos of the property, Exhibit A-2 – new architectural panels with new signage being added to the existing façade, and Exhibit A-3 – site plan showing site improvements and additional street lights.

Mr. Hofmann stated that he has been working with Mike Mistretta to address all the concerns raised.

In response to questions from the Board, Mr. Hofmann stated that the columns will be grey and the spacing will be 30'.

Mr. Mistretta stated that he asked for indentation for the columns to give them some texture. He worked with the applicant to improve the look and they have done a nice job of it. The Beautification Committee wrote a letter stating their concerns and the applicant has made a good effort to meet most of the items they asked for including a brick paver sidewalk, ornamental lights, and break up panels over the stores. The total square footage of signage originally proposed was about 700 square feet and they have reduced it to 188 square feet; 221 square feet are permitted. Mr. Mistretta recommended that the resolution of approval include information regarding how the panels are to be painted and maintained. He does not want the panels to turn into billboards and the lettering should be consistent with the downtown standards.

Mr. Hofmann noted that all of the letters are proposed to be black but E-Medical wants to maintain their brand recognition so they are proposing red and blue. The font would be the same. The lettering will be lit from the back and the brightness of the lighting will be subject to Mr. Mistretta's approval. The lighting could be on a timer. E-Medical will be open 24/7 but the other tenants will be open no later than 9:00.

Discussion took place with regard to the lettering and lighting and it was determined that all the lettering should be black and that the E-Medical sign would be lighted 24/7 but the others will be on a timer to go off at 9:00 pm. Mr. Mistretta suggested that the applicant look at the decorative lighting over the walkway that is being used at the new Primrose School location.

Discussion took place with regard to the existing free-standing sign. David Bendush, attorney for the owner of the property, stated that the owner would prefer to keep the monument sign which is mostly for the benefit of drivers in the roadway. The Board had no objection to leaving the free-standing sign.

Mr. Mistretta advised that the applicant has provided a landscaping plan and he has requested that they replace trees that are not in good condition and that the street trees be maintained.

Open to Public

The hearing was opened to the public for questions or comments regarding the application.

Julie Lloyd, member of the Beautification Committee, asked that the coloring behind the letters be lightened and suggested that the trees be trimmed to help visibility.

Further discussion took place regarding the signage and Mr. Hofmann stated that the proposed letters will be approximately 18" high. The fifth panel is for a future tenant and it will not be used until there is a fifth tenant. The applicant will provide landscaping subject to Mr. Mistretta's approval.

A motion was made by Mr. Boyer, seconded by Mr. Sullivan, to approve Application #25-14: 369 Springfield Avenue Associates, LLC, 369 Springfield Ave., Bl.208, L.21, including approval of proposed changes to the exterior elevation of an existing one-story commercial building, and subject to the conditions that shall be set forth in a Resolution of Memorialization to be adopted by the Board at a future meeting. The voice vote was unanimous with Mr. Bussiculo, Mr. Boyer, Mr. Smith, Mr. Siburn, Mr. Sullivan, Mr. Henry, and Mr. Delia voting in favor.

Mr. Boyer left the meeting (9:30).

**--CARRIED FROM SEPTEMBER 11, 2014, WITHOUT FURTHER NOTICE:
App.#11-14: 174 Snyder Ave. BH, LLC, 174 Snyder Avenue, Block 801, Lot
50 (R-15 Zone)**

Seeking a d(1) use variance for a two-story residential dwelling built in 1910 and located in the R-15 single family zone which has been operating as a four-family home. The applicant and owner of the property would like to undertake interior improvements, most notably a relocation of the existing laundry facilities from the interior living area on the second floor to the attic area above the second floor units. Other changes include new exterior windows and removal of the existing Bilco door. The existing shed and garbage enclosure will be relocated to comply with the setback requirements or removed entirely. Relief is also needed from Section 8.1.1B.1 "Expanding a nonconforming use" due to the interior expansion into the existing attic space for use as a utility room. Existing nonconforming issues are principal use; principal front-yard setback; existing "other" coverage of 22.44%, which includes the 800 sq. ft. stone driveway (allowed: 10%); and existing shed (which encroaches into the rear-yard setback).

Joseph Murray, attorney for the applicant, stated that the applicant is seeking to have the Board issue a certification that what the applicant owns is a pre-existing, non-conforming use. The applicant is proposing to move part of the laundry facilities to the attic and the zoning officer has advised that a variance is required. Mr. Murray advised that he has provided a legal memo to the effect that movement to the attic does not require a variance because it is negligible or minor in respect. The applicant is seeking a determination by the Board that they

are entitled to a certification that the property originated as a non-conforming use and therefore a variance for the use is not necessary.

Tony Santorella, principal of the applicant, was sworn and stated that he acquired the property in January of 2012. Prior to the closing he met with an architect to discuss interior modifications of the home and subsequent to the closing he made application to the building inspector to undertake those modifications. The objective of purchasing the property was for investment but at some time in the future he and his wife might want to live on the property. At the time of the purchase he met with the realtor and with the tenants of the first, second and third units. He looked at the home, the basement, the attic and walked the property. There was a verbal representations made about the use of the building as a four-family home. He observed four occupied apartments with four kitchens, bathroom and two bedrooms. There were four mail boxes, four gas meters and a few satellite dishes on the roof. A contract to purchase the property was entered into with the owner, Dora Pagano. In the contract it is stated that the buyer intends to use the property as a four family home and the Seller states that the use does not violate any applicable zoning ordinance, etc. The attorney representing the applicant in the purchase of the property said that he contacted the construction department and was notified that there was nothing required except for a fire inspection. His attorney did not make an application to the Board of Adjustment seeking a determination as to the use issue. Following the closing they made plans for renovations and it was their intention to bring the condition of the structure into code. The improvements include changing the units to one bedroom units, improvements to the stairwells, lighting and plumbing. The applicant's architect had numerous conversations with various town officials and recommendations were made by the officials over the course of a few months. Once the architectural plans were completed they applied for permits and it was denied by the zoning officer. Mr. Santorella presented Exhibit A-1 – copy of the contract of sale.

Michael Tobia, applicant's planner, was sworn and accepted as an expert witness. Mr. Tobia presented Exhibits A-2, A-3, A-4 and A-5 – photo boards showing views of the house. Mr. Tobia indicated on the photo boards the location of four mail boxes on the building, the location of the entrance in the rear of the building, the roof shingles to be replaced and the windows proposed to be upgraded. The applicant also proposes the removal of the bilko doors that lead to a low ceiling basement. The basement would be finished and used as a laundry facility. Mr. Tobia indicated the location of the windows to be replaced with high quality windows and the location of the chimney to be removed. The current heating system is oil, hot water and there is no air-conditioning. Mr.

Tobia described the interior – four apartments, two on the first floor and two on the second floor. He stated that the applicant wants to utilize the attic for laundry and HVAC units with each tenant having part of the attic space for laundry. The two driveways and parking are adjacent to the structure as shown on the exhibit. The house is now vacant and has been vacant since the closing in January 2012.

Mr. Murray advised that the previous owner, Dora Pagano, has signed an affidavit as to the use of the structure and he proposed to submit the affidavit as Exhibit A-6.

Discussion took place regarding the acceptability of an affidavit in place of testimony. Mr. Bernstein stated that the Board's practice is not to accept affidavits and that if this person is of sound mind and local there is no reason that she cannot be brought to the board to testify.

Mr. Murray read the rules of evidence on this issue and expressed the opinion that the affidavit should be accepted.

Mr. Murray presented Exhibit A-7 – page from the assessor's records dated 2013/2014 which provides information regarding the use of the property as a four family, multi dwelling structure that was built in 1910, containing 4 living rooms, 4 kitchens, 4 bathrooms, and 8 bedrooms.

Mr. Bernstein noted that the exhibit shows that the property is taxed as a four family but whether or not it is a legal four family is not for the Board to decide.

The application was carried to November 11, 2014 with no further notice required.

App.#27-14: The County of Union, The Union County Improvement Authority (UCIA) and Center Management Group LLC, 40 Watchung Way, Block 4002, Lot 15, Block 3401, Lot 50, Block 3303, Lots 1.01 and 1.04 (OL-Zone)

Request to continue existing services at Runnells Specialized Hospital with private operator contrary to OL Zone which requires a "governmental use."

Steven Merman gave a brief summary of what he will be presenting and stated that he will provide documents to Mr. Bernstein for review.

The hearing of this application was carried to October 23, 2014 with no further notice required.

Adoption of Minutes

August 14, 2014 Regular Meeting

August 28, 2014 Special Meeting

September 11, 2014 Regular Meeting

A motion was made by Mr. Smith, seconded by Mr. Siburn, and carried by unanimous voice vote to adopt the minutes of the August 14, 2014 Regular Meeting, the August 28, 2014 Regular Meeting and the September 11, 2014 Special Meeting as presented.

Adjournment:

A motion was made by Mr. Delia, seconded by Mr. Smith, to adjourn the meeting. The voice vote was unanimous and the meeting was adjourned at 10:45 PM.

Regina Giardina, Secretary Pro Tem